

**HB3876**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB3876**

Introduced 2/28/2005, by Rep. Karen May

**SYNOPSIS AS INTRODUCED:**

New Act  
30 ILCS 105/5.640 new

Creates the Wetlands Protection Act. Provides for the regulation of certain wetlands in Illinois. Amends the State Finance Act to create the Wetlands Protection Fund.

LRB094 11594 JAM 42647 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning wetlands.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Wetlands Protection Act.

6 Section 5. Scope. This Act does not apply to property  
7 within a municipality with a population greater than 500,000,  
8 nor to property within the incorporated or unincorporated area  
9 of a county with a population greater than 3,000,000.

10 Section 10. Definitions. For the purposes of this Act:

11 (a) "ADID" means those aquatic sites identified by the  
12 United States Environmental Protection Agency and the United  
13 States Army Corps of Engineers as areas generally unsuitable  
14 for disposal of dredged or fill material in accordance with 40  
15 C.F.R. Part 230.80.

16 (b) "Affected property" means any property upon which a  
17 regulated activity is conducted.

18 (c) "Agency" means the Illinois Environmental Protection  
19 Agency.

20 (d) "Agricultural land" means land that is currently used  
21 for normal farming or ranching activities.

22 (e) "Avoidance" means any action taken in a manner such  
23 that a regulated activity will not occur.

24 (f) "Bog" means a peat-accumulating wetland that has no  
25 significant inflows or outflows and supports acidophilic  
26 mosses, particularly sphagnum, resulting in highly acidic  
27 conditions.

28 (g) "Commencing such a regulated activity" means any steps  
29 taken in preparation of conducting a regulated activity that  
30 may impact the affected property, such as cutting, filling,  
31 pumping of water, and earth movement.

1 (h) "Committee" means the Wetlands Advisory Committee.

2 (i) "Contiguous wetland" means a wetland that is delineated  
3 on the affected property and extends beyond the boundary of  
4 that property.

5 (j) "Converted wetland" means a wetland that has been  
6 drained, dredged, filled, leveled, or otherwise manipulated  
7 (including the removal of woody vegetation or any activity that  
8 results in impairing or reducing the flow and circulation of  
9 water) for the purpose of or with the effect of making possible  
10 the production of an agricultural commodity without further  
11 application of the manipulations described herein if: (i) such  
12 production would not have been possible but for such action,  
13 and (ii) before such action such land was wetland, farmed  
14 wetland, or farmed-wetland pasture and was neither highly  
15 erodible land nor highly erodible cropland.

16 (k) "Corps of Engineers" or "COE" means the United States  
17 Army Corps of Engineers.

18 (l) "Cypress swamp" means forested, permanent or  
19 semi-permanent bodies of water, with species assemblages  
20 characteristic of the Gulf and Southeastern Coastal Plains,  
21 including bald cypress, which are restricted to extreme  
22 southern Illinois.

23 (m) "Department" means the Illinois Department of Natural  
24 Resources.

25 (n) "Director" means the Director of Natural Resources.

26 (o) "Fen" means a wetland fed by an alkaline water source  
27 such as a calcareous spring or seep.

28 (p) "Floristic quality index" means an index calculated  
29 using the Floristic Quality Assessment Method of assessing  
30 floristic integrity (or quality) by summing the numerical  
31 quality ratings of all plant species present then dividing the  
32 total by the number of native species present (mean coefficient  
33 of conservatism) or by the square root of the number of native  
34 species (floristic quality index). (Taft, J.B., G.S. Wilhelm,  
35 D.M. Ladd, and L.A. Masters. 1997. Floristic quality assessment  
36 for vegetation in Illinois, a method for assessing vegetation

1 integrity. Erigenia 15: 3-95.)

2 (q) "Incidentally created" means created as a result of any  
3 normal or routine activity coincidental with the conduct of  
4 legitimate business enterprises, except that a wetland or  
5 depression created as mitigation for any activity affecting  
6 wetlands is not "incidentally created."

7 (r) "Incidental fallback" means the redeposit of small  
8 volumes of dredged material that is incidental to excavation  
9 activity in waters of the State when such material falls back  
10 to substantially the same place as the initial removal.

11 (s) "Isolated wetlands" means those areas that are  
12 inundated or saturated by surface or ground water at a  
13 frequency or duration sufficient to support, and that under  
14 normal circumstances do support, a prevalence of vegetation  
15 typically adapted for life in saturated soil conditions, and  
16 that are not regulated under the federal Clean Water Act.

17 (t) "Panne" means wet interdunal flats located near Lake  
18 Michigan.

19 (u) "Person" means an individual, partnership,  
20 co-partnership, firm, company, limited liability company,  
21 corporation, association, joint stock company, trust, estate,  
22 political subdivision, State agency, or other legal entity, or  
23 its legal representative, agent, or assigns.

24 (v) "Prior converted cropland" means a converted wetland  
25 where the conversion occurred prior to December 23, 1985, an  
26 agricultural commodity has been produced at least once before  
27 December 23, 1985, and as of December 23, 1985, the converted  
28 wetland did not support woody vegetation and met the following  
29 hydrologic criteria: (i) inundation was less than 15  
30 consecutive days during the growing season or 10% of the  
31 growing season, whichever is less, in most years (50% chance or  
32 more); and (ii) if a pothole, ponding was less than 7  
33 consecutive days during the growing season in most years (50%  
34 chance or more) and saturation was less than 14 consecutive  
35 days during the growing season most years (50% chance or more).

36 (w) "Regulated activity" means the discharge of dredged or

1 fill material into a wetland, the drainage of a wetland, or  
2 excavation of a wetland that results in more than incidental  
3 fallback.

4 (x) "Threatened or endangered species" means those species  
5 that have been designated as threatened or endangered by the  
6 Illinois Endangered Species Protection Board pursuant to the  
7 Illinois Endangered Species Protection Act and those species  
8 that have been designated as threatened or endangered by the  
9 U.S. Fish and Wildlife Service pursuant to the Endangered  
10 Species Act.

11 (y) "Upland" means non-wetland, when used to describe a  
12 particular land use, or non-hydric, when used to describe a  
13 soil type.

14 (z) "Wetlands" means those areas that are inundated or  
15 saturated by surface or ground water at a frequency or duration  
16 sufficient to support, and that under normal circumstances do  
17 support, a prevalence of vegetation typically adapted for life  
18 in saturated soil conditions.

19 Section 20. Exemptions.

20 (a) As long as they do not have as their purpose bringing a  
21 wetland into a use to which it was not previously subject, the  
22 following are not prohibited by or otherwise subject to  
23 regulation under this Act:

24 (1) Normal farming, silviculture, and ranching  
25 activities such as plowing, seeding, cultivating, minor  
26 drainage, harvesting for the production of food, fiber, and  
27 forest products, or upland soil and water conservation  
28 practices.

29 (2) Maintenance, including emergency reconstruction of  
30 recently damaged parts, of currently serviceable  
31 structures such as dikes, dams, levees, groins, riprap,  
32 breakwaters, causeways, and bridge abutments or  
33 approaches, and transportation structures.

34 (3) Construction or maintenance of farm or stock ponds  
35 or irrigation canals or ditches, or the maintenance of

1 drainage ditches.

2 (4) Construction of temporary sedimentation basins on  
3 a construction site that does not include any regulated  
4 activities within a wetland.

5 (5) Construction or maintenance of farm roads or forest  
6 roads, or temporary roads for moving mining equipment,  
7 where such roads are constructed and maintained, in  
8 accordance with best management practices, to assure that  
9 flow and circulation patterns and chemical and biological  
10 characteristics of the wetland are not impaired, that the  
11 reach of the wetland is not reduced, and that any adverse  
12 effect on the aquatic environment will be otherwise  
13 minimized.

14 (6) Except for Class IA and Class IB wetlands,  
15 activities for the placement of pilings for linear  
16 projects, such as bridges, elevated walkways, and power  
17 line structures in accordance with best management  
18 practices, to assure that the flow and circulation patterns  
19 and chemical and biological characteristics of the wetland  
20 are not impaired, that the reach of the wetland is not  
21 reduced, and that any adverse effect on the aquatic  
22 environment will be otherwise minimized.

23 (7) Installation and maintenance of signs, lighting,  
24 and fences and the mowing of vegetation within existing  
25 maintained rights-of-way.

26 (8) Repair and maintenance of existing buildings,  
27 facilities, lawns, and ornamental plantings.

28 (9) Construction projects that have obtained any  
29 necessary building permits from applicable local  
30 jurisdictions prior to the effective date of this Act.

31 (10) Application of media, including deicing media, on  
32 the surface of existing roads for purposes of public  
33 safety.

34 (11) Non-surface disturbing surveys and investigations  
35 for construction, planning, maintenance, or location of  
36 environmental resources.

1           (12) Wetland management practices on lands that are  
2           used primarily for the management of waterfowl, other  
3           migratory water birds, or furbearers if such practices took  
4           place on these lands prior to the effective date of this  
5           Act. This includes vegetation management that may include  
6           the use of fire, chemical, or mechanical (hydro-axe,  
7           bulldozer, romo disk, or similar equipment) removal of  
8           invading woody or herbaceous vegetation to maintain a  
9           preferred successional stage. Use of chemicals must be by a  
10          certified applicator and chemicals must be registered for  
11          appropriate use. Clearing or removal of woody vegetation  
12          shall be limited to 4-inch dbh (diameter at breast height)  
13          or smaller material for the purpose of establishing or  
14          maintaining the successional stage of a wetland as an  
15          herbaceous wetland vegetated by native moist soil plants or  
16          selected wildlife food plants.

17          (b) Any exemption authorized by and pertaining to wetlands  
18          that are subject to regulation under the federal Clean Water  
19          Act, or regulations promulgated thereunder, shall also be an  
20          exemption for the purpose of this Act.

21          (c) The following are not isolated wetlands for purposes of  
22          this Act:

23               (1) Waste treatment systems, including treatment ponds  
24               or lagoons, designed to comply with water quality standards  
25               of the State or to remediate a site in accordance with an  
26               approved Agency program, and former waste treatment  
27               systems that have ceased operation less than 33 years prior  
28               to commencement of the proposed activity or which are  
29               undergoing remediation in accordance with an approved  
30               Agency program.

31               (2) A drainage or irrigation ditch.

32               (3) An artificially irrigated area that would revert to  
33               upland if the irrigation ceased.

34               (4) An artificial lake or pond created by excavating or  
35               diking upland to collect and retain water for the primary  
36               purpose of stock watering, irrigation, wildlife, fire

1 control, ornamentation or landscaping, or as a settling  
2 pond.

3 (5) Except for isolated wetlands created pursuant to  
4 mining activities regulated in accordance with item (7)  
5 below, an incidentally created water-filled depression,  
6 unless: (i) ownership of the property containing the  
7 depression has been transferred away from the party who  
8 incidentally created the water-filled depression, (ii)  
9 that ownership transfer occurred more than 12 months prior  
10 to the commencement of an otherwise regulated activity,  
11 (iii) the use of the property has changed from the use that  
12 existed when the property was transferred from the party  
13 who incidentally created the water-filled depression, and  
14 (iv) the resulting body of water meets the definition in  
15 this Act of an isolated wetland; or if the ownership of the  
16 property has not been transferred from the party who  
17 created the incidentally created water-filled depression,  
18 the depression was not created more than 33 years before  
19 the date the application is received by the Department.

20 (6) Stormwater or spill management systems, including  
21 retention and detention basins, ditches and channels, and  
22 former stormwater or spill management systems that have  
23 ceased operation less than 33 years prior to commencement  
24 of the proposed activity or which are undergoing  
25 remediation in accordance with an approved Agency program.

26 (7) Waters that undergo mining activities conducted  
27 pursuant to a federal, State, regional, or local permit  
28 that requires the reclamation of the affected wetlands if  
29 the reclamation will be completed within a reasonable  
30 period of time after completion of activities at the site  
31 and, upon completion of such reclamation, the wetlands will  
32 support functions generally equivalent to the functions  
33 supported by the wetlands at the time of commencement of  
34 such activities.

35 (8) Prior converted cropland.

36 (d) Any activity covered by the Interagency Wetland Policy

1 Act of 1989 is exempt from all of the provisions of this Act.

2 Section 25. Applicability. Until June 30, 2008, the  
3 requirements of this Act apply to all isolated wetlands as that  
4 term is defined in this Act. In the event that an isolated  
5 wetland ceases to meet that definition because it becomes  
6 subject to regulation under the federal Clean Water Act, such  
7 wetland shall no longer be subject to the provisions of this  
8 Act.

9 Beginning July 1, 2008, the requirements of this Act apply  
10 to all wetlands as that term is defined in this Act, unless a  
11 COE permit is required; provided, however, that if an exemption  
12 under Section 20 applies, that exemption shall continue in  
13 effect after July 1, 2008.

14 The Department on behalf of the State of Illinois may enter  
15 into written delegation agreements with the Corps of Engineers  
16 under which it may assume all or portions of COE authority  
17 under the federal Clean Water Act. Such delegation agreements  
18 shall provide, at a minimum, that all delineation,  
19 classification, notification, and permitting requirements  
20 shall be at least as stringent as those contained in this Act.

21 Section 30. Wetlands delineation, classification,  
22 notification, permits. The requirements of this Section apply  
23 upon the adoption of rules under Sections 45(c) and 60 of this  
24 Act, or 270 days from the effective date of this Act, whichever  
25 occurs first.

26 (a) The procedures and regulatory criteria for the  
27 delineation, classification, notification, and permitting for  
28 wetlands shall be conducted in accordance with the provisions  
29 of this Section.

30 (b) Any person who intends to conduct a regulated activity  
31 within the State may request a determination from the  
32 Department as to the existence, location, and surface area of  
33 any wetlands on or contiguous to the affected property. Nothing  
34 in this Section shall require the person to seek such a

1 determination; however, failure to seek and obtain a  
2 determination shall not be a defense against a violation of  
3 this Act.

4 The person seeking a determination shall provide the  
5 Department with sufficient information to render such a  
6 determination. Such information shall include a wetland  
7 delineation made in accordance with the COE Wetlands  
8 Delineation Manual, Technical Report Y-87-1. Delineation of  
9 the portion of a contiguous wetland not on the affected  
10 property shall be made to the extent reasonably possible, and  
11 methods other than physical onsite evaluations shall be  
12 considered by the Department.

13 The Department shall provide notice to the applicant as to  
14 whether a submitted application is complete. Unless the  
15 Department notifies the applicant that the application is  
16 incomplete within 15 days of receipt of the application, the  
17 application shall be deemed complete. The Department may  
18 request additional information as needed to make the  
19 completeness determination.

20 The Department shall, upon receipt of a complete  
21 determination request, provide the person, within 30 days, with  
22 a determination as to the existence, location, and surface area  
23 of wetlands located on or contiguous to the affected property.

24 If the Department determines that there are no wetlands on  
25 the affected property, any otherwise regulated activity  
26 conducted on the property shall not be subject to the  
27 provisions of this Act.

28 If the Department determines that there is one or more  
29 wetlands on or contiguous to the affected property, the person  
30 may apply to the Department for classification of such  
31 wetlands.

32 Any determination of a wetland by the Department is a final  
33 decision for purposes of appeal.

34 (c) If any person intends to conduct a regulated activity,  
35 such person may, prior to commencing such a regulated activity,  
36 request that the wetland be classified as Class IA, IB, II, or

1 III in accordance with the provisions of this Section. Nothing  
2 in this Section shall require the person to seek such a  
3 classification; however, any wetlands not so classified shall  
4 be considered Class IA for the purposes of this Act.

5 The person seeking a classification shall provide the  
6 Department with sufficient information to render such a  
7 classification. Such information shall include a wetland  
8 delineation made in accordance with the COE Wetlands  
9 Delineation Manual, Technical Report Y-87-1.

10 Unless the Department notifies the applicant that the  
11 application is incomplete within 15 days of receipt of the  
12 application, the application shall be deemed complete. The  
13 Department may request additional information as needed to make  
14 the completeness determination. The Department shall, upon  
15 receipt of a complete classification request, provide the  
16 person, within 30 days, with a classification of wetlands  
17 located on or contiguous to the affected property. If the  
18 Department fails to provide the person with a classification  
19 within 30 days, the classification requested by the person  
20 shall be deemed granted.

21 Wetlands shall be classified as follows:

22 (1) The Department shall classify a wetland as a Class  
23 IA Wetland if and only if:

24 (A) the wetland is or encompasses a bog;

25 (B) the wetland is or encompasses a fen;

26 (C) the wetland is or encompasses a panne;

27 (D) the wetland is or encompasses a cypress swamp;

28 (E) the wetland is or encompasses a Category I  
29 Illinois Natural Areas Inventory Site, provided that  
30 the Department shall disclose within 5 working days of  
31 a request from an applicant, a prospective applicant,  
32 or a qualified professional on behalf of an applicant  
33 or a prospective applicant whether a site identified by  
34 latitude and longitude includes a Category I Illinois  
35 Natural Areas Inventory Site; or

36 (F) a threatened or endangered species has been

1 identified in the wetland.

2 (2) The Department shall classify a wetland as a  
3 Class IB Wetland if and only if the wetland:

4 (A) is or encompasses an ADID site;

5 (B) is or encompasses a Category VI Illinois  
6 Natural Area Inventory Site or regional equivalent;  
7 provided that the Department shall disclose within 5  
8 working days of a request from an applicant, a  
9 prospective applicant, or a qualified professional on  
10 behalf of an applicant or a prospective applicant  
11 whether a site identified by latitude and longitude  
12 includes a Category VI Illinois Natural Areas  
13 Inventory Site; or

14 (C) has a Floristic Quality Index (FQI) which is  
15 equal to or greater than 20 or a mean coefficient of  
16 conservatism (Mean C) equal to or greater than 3.5,  
17 determined in accordance with rules adopted by the  
18 Department.

19 (3) The Department shall classify a wetland as a  
20 Class II Wetland if and only if the wetland is not a Class  
21 I-A, Class I-B, or Class III wetland.

22 (4) The Department shall classify a wetland as a  
23 Class III Wetland if and only if:

24 (A) the wetland is not a Class IA or Class IB  
25 wetland; and

26 (B) the total size of the wetland, including  
27 contiguous areas, is

28 (i) less than 0.25 acre, or

29 (ii) less than 0.5 acre if the wetland is in a  
30 county that does not have authority to establish a  
31 stormwater management program under Section 5-1062  
32 of the Counties Code and the wetland is in  
33 agricultural land.

34 (d) Subject to the provisions of Section 40 regarding  
35 general permits, no person may conduct or cause to be conducted  
36 a regulated activity within or affecting a wetland in such a

1 manner that the biological or hydrological integrity of the  
2 wetland is impaired within the scope of this Act, except in  
3 accordance with the terms of an individual permit issued by the  
4 Department or authorization to proceed as applicable under this  
5 Section.

6 (1) Class IA Wetlands:

7 (A) A permit to conduct a regulated activity  
8 affecting a Class IA wetland within the scope of this  
9 Act shall be granted if documentation is submitted that  
10 demonstrates that complete avoidance of impacts to the  
11 Class IA wetland precludes all economic use of the  
12 entire parcel and that no practicable alternative to  
13 wetland modification exists.

14 Based upon a review of the submitted documentation  
15 and any other available resources, the Department  
16 shall make a determination as to whether the proposed  
17 modification represents the least amount of wetland  
18 impact required to restore an economic use to the  
19 upland portion of the parcel.

20 Wetland losses shall be mitigated at a ratio of  
21 4.5:1 and shall be mitigated in kind and within the  
22 same watershed as the impacted area restoring, to the  
23 maximum degree practicable as determined by the  
24 Department, both the type and functions of the wetland  
25 that will be affected by the regulatory activity.

26 The Director, for good cause shown and on a  
27 case-by-case basis, may authorize an upward or  
28 downward departure from the mitigation ratio otherwise  
29 required under this subdivision (d) (1), but for a Class  
30 IA wetland the Director shall require a mitigation  
31 ration of at least 4:1 and shall not require a  
32 mitigation ratio greater than 5:1.

33 (B) No permit under this subdivision (d) (1) may be  
34 issued by the Department without a public notice and a  
35 public hearing.

36 (2) Class IB Wetlands:

1 (A) A permit to conduct a regulated activity  
2 affecting a Class IB wetland within the scope of this  
3 Act shall be granted if documentation is submitted that  
4 demonstrates that no practicable alternative to  
5 wetland modification exists.

6 Based upon a review of the submitted documentation  
7 and any other available resources, the Department  
8 shall make a determination as to whether the proposed  
9 modification constitutes the least amount of wetland  
10 impact practicable and whether a permit should be  
11 granted.

12 Wetland losses shall be mitigated at a ratio of 3:1  
13 and shall be mitigated in kind and within the same  
14 watershed as the impacted area, restoring both the type  
15 and functions of the wetlands that will be affected by  
16 the regulated activity.

17 The Director, for good cause shown and on a  
18 case-by-case basis, may authorize an upward or  
19 downward departure from the mitigation ratio otherwise  
20 required under this subdivision (d) (2), but for a Class  
21 IB wetland the Director shall require a mitigation  
22 ration of at least 2.5:1 and shall not require a  
23 mitigation ratio greater than 3.5:1.

24 (B) No permit under this subdivision (d) (2) may be  
25 issued by the Department without a public notice and  
26 opportunity for public hearing being afforded. The  
27 Department shall hold a public hearing concerning a  
28 permit application if the proposed activity may have a  
29 significant impact upon wetland resources or if the  
30 Department determines that a public hearing is  
31 otherwise appropriate.

32 (3) Class II Wetlands:

33 (A) A permit to conduct a regulated activity  
34 affecting a Class II wetland within the scope of this  
35 Act shall be granted if documentation is submitted  
36 demonstrating that no reasonable alternative to

1 wetland modification exists.

2 Based upon a review of the submitted documentation  
3 and any other available resources, the Department  
4 shall make a determination as to whether the proposed  
5 modification constitutes the least amount of wetland  
6 impact practicable and whether a permit should be  
7 granted.

8 Wetland losses shall be mitigated at a ratio of  
9 1.5:1 and shall be mitigated in kind and within the  
10 same watershed as the impacted area, restoring both the  
11 type and functions of the wetland that will be affected  
12 by the regulated activity.

13 (B) No permit under this subdivision (d) (3) may be  
14 issued by the Department without a public notice and  
15 opportunity for public hearing being afforded. The  
16 Department shall hold a public hearing concerning a  
17 permit application if the proposed activity may have a  
18 significant impact upon wetland resources or if the  
19 Department determines that a public hearing is  
20 otherwise appropriate.

21 (4) Class III Wetlands:

22 (A) No regulated activity covered under this Act  
23 that will impact an area that has been classified as a  
24 Class III wetland may be undertaken without prior  
25 notification to the Department.

26 (B) Such notification shall include (1) a sketch  
27 that reasonably depicts the area that will be affected  
28 by the regulated activity, including wetland and water  
29 boundaries for the areas affected and the existing land  
30 uses and structures; (2) a description of the proposed  
31 activity, including its purpose; (3) a description of  
32 any public benefit to be derived from the proposed  
33 project; and (4) the names and addresses of adjacent  
34 landowners as determined by the current tax assessment  
35 rolls.

36 (C) Upon receipt of a notification of intent, the

1 Department shall verify that the regulated activity  
2 will affect a wetland that it previously classified as  
3 Class III.

4 If the Department so verifies, the Department  
5 shall send the person, within 30 days of the receipt of  
6 such notification, a response stating that the  
7 regulated activity may proceed.

8 If the Department cannot so verify, the Department  
9 shall send the person, within 30 days of the receipt of  
10 such notification, a response stating that no  
11 classification has been made by the Department, or that  
12 a Classification of IA, IB, or II was made and that the  
13 regulated activity may not proceed until either a  
14 classification is made pursuant to this Section, or a  
15 permit is obtained, as applicable.

16 Failure of the Department to respond to a  
17 notification shall be deemed an authorization to  
18 proceed.

19 (D) No permit shall be required for a regulated  
20 activity covered under this Act that will impact an  
21 area that has been classified as a Class III wetland.

22 (e) Within 15 days of the receipt of a permit application,  
23 the Department shall determine if an application is complete.  
24 To be deemed complete, an application must provide all  
25 information, as requested in Department application forms,  
26 sufficient to evaluate the application. Such information shall  
27 include, at a minimum: (1) a map of the area that will be  
28 affected by the activity, including wetland and water  
29 boundaries for the areas affected and the existing uses and  
30 structures. Such information shall include a wetland  
31 delineation made in accordance with the COE Wetlands  
32 Delineation Manual, Technical Report Y-87-1; (2) a description  
33 of the proposed activity, including its purpose, the location  
34 and dimensions of any structures, grading or fills, drainage,  
35 roads, sewers and water supply, parking lots, stormwater  
36 facilities, discharge of pollutants, and onsite waste

1 disposal; (3) a description of any public benefit to be derived  
2 from the proposed project; and (4) the names and addresses of  
3 adjacent landowners as determined by the current tax assessment  
4 rolls. The Department application forms shall be finalized and  
5 made available prior to the date on which any application is  
6 required. The Department shall provide notice to the applicant  
7 as to whether a submitted application is complete. Unless the  
8 Department notifies the applicant that the application is  
9 incomplete within 20 days of receipt of the application, the  
10 application shall be deemed complete. The Department may  
11 request additional information as needed to make the  
12 completeness determination. The Department may, to the extent  
13 practicable, provide the applicant with a reasonable  
14 opportunity to correct deficiencies prior to a final  
15 determination of completeness. Within 90 days from the receipt  
16 of a complete application for permit, the Department shall  
17 either issue or deny the permit or issue it with conditions. If  
18 a public hearing is held on the application, however, this  
19 period shall be extended by 45 days.

20 (f) The Department shall not issue a permit pursuant to  
21 this Section unless the Agency has certified that the proposed  
22 activity will not cause or contribute to a violation of any  
23 State water quality standard. The Agency will be deemed to have  
24 certified that the proposed activity will not cause or  
25 contribute to a violation of any State water quality standard  
26 if it has not declined in writing to so certify within 80 days  
27 of the filing of the application unless the Agency has  
28 requested that the applicant supply more information relevant  
29 to assessing the water quality impacts of the proposed  
30 activity. If a public hearing is held on the application,  
31 however, this period shall be extended by 45 days.

32 (g) A person may submit concurrent requests for (i)  
33 determination and delineation, (ii) classification, and (iii)  
34 issuance of a permit or notification. The Department shall act  
35 on such combined requests concurrently in accordance with  
36 expedited permitting procedures adopted by the Department.

1 (h) Any person may submit an application for an  
2 after-the-fact permit to be issued under this Act, and the  
3 Department is authorized to issue such an after-the-fact permit  
4 if it determines that the activities covered by the  
5 after-the-fact permit application were undertaken and  
6 conducted in response to emergency circumstances where there  
7 may be an imminent threat to persons, public infrastructure,  
8 personal property, or uninterrupted utility service that made  
9 it impracticable for the applicant to obtain prior  
10 authorization under this Act to undertake and conduct such  
11 activities. The applicant shall be required to demonstrate that  
12 it provided notice to the Department of the emergency  
13 circumstances as soon as reasonably possible following the  
14 discovery of such circumstances.

15 (i) The Department shall adopt rules to carry out the  
16 provisions of this Section in accordance with Section 45 of  
17 this Act.

18 Section 35. Surety. The Department may provide by rule for  
19 any requirements regarding bonds or letters of credit in favor  
20 of the State, including conditions sufficient to secure  
21 compliance with conditions and limitations of a permit.

22 Section 40. General permits.

23 (a) Notwithstanding Section 30, any person who intends to  
24 conduct a regulated activity within the State may do so in  
25 accordance with a general permit issued by the Department under  
26 this Section.

27 (b) Permits for all categories of activities, subject to  
28 the same permit limitations and conditions, that are the  
29 subject of a nationwide permit issued by the Corps of Engineers  
30 in effect on the date of the enactment of this Act, are adopted  
31 as general permits covering regulated activities subject to  
32 this Act.

33 (c) The Department may adopt general permits covering other  
34 activities that would be subject to the same permit limitations

1 and conditions, if it determines that the activities in such  
2 category will cause only minimal adverse environmental effects  
3 when performed separately, will have only minimal cumulative  
4 adverse effect on the environment, will not cause or contribute  
5 to a violation of State water quality standards when performed  
6 separately, and will have only a minimal cumulative adverse  
7 effect on water quality. The Department may prescribe best  
8 management practices for any general permit issued under this  
9 Section. The Department shall consider any optional mitigation  
10 proposed by an applicant in determining whether the net adverse  
11 environmental effects of a proposed regulated activity are  
12 minimal.

13 Specifically, the Department must adopt general permits  
14 for each of the following:

15 (1) The construction or maintenance of access roads for  
16 utility lines, substations or related equipment or  
17 facilities.

18 (2) Activities for the purpose of preserving and  
19 enhancing aviation safety or to prevent an airport hazard.

20 (d) No general permit adopted under this Section shall be  
21 for a period of more than 5 years after the date of its  
22 issuance. A general permit may be revoked or modified by the  
23 Department if, after opportunity for public hearing, the  
24 Department determines that the activities authorized by the  
25 general permit have an adverse impact on the environment, cause  
26 or contribute to a violation of State water quality standards,  
27 or are more appropriately authorized by individual permits.

28 (e) Compliance with the terms of a general permit shall be  
29 deemed compliance with the provisions of this Act if the  
30 applicant (i) files a notice of intent to be covered under the  
31 provisions of the general permit in accordance with regulations  
32 adopted pursuant to this Act and (ii) files any reports  
33 required by the general permit.

34 (f) The Department shall respond to a notice of intent to  
35 proceed under a general permit issued under this Section within  
36 30 days after the Department receives the notice. In the event

1 that the Department fails to respond to a notice of intent to  
2 proceed within 30 days as required by this subsection (f), the  
3 person submitting the notice shall be deemed fully authorized  
4 to conduct the activities described in the notice under the  
5 terms and conditions of the applicable general permit.

6 Section 45. Wetlands Advisory Committee; duties; rules

7 (a) There is hereby established a Wetlands Advisory  
8 Committee, which shall consist of 17 members appointed by the  
9 Governor and 2 non-voting members.

10 The Committee shall include 5 members representing the  
11 interests of business, industry, real estate, and agriculture.

12 The Committee shall include 5 members selected from the  
13 membership of environmental and conservation groups in the  
14 State.

15 The Committee shall include 2 members representing  
16 counties exercising authority under Section 5-1062 or 5-1062.1  
17 of the Counties Code to establish stormwater management  
18 programs.

19 The Committee shall include one member representing  
20 municipalities.

21 The Committee shall include one member representing  
22 building trades unions.

23 The Committee shall include 3 other members as determined  
24 by the Governor.

25 The Director of Natural Resources, or his or her designee,  
26 and the Director of the Illinois Environmental Protection  
27 Agency, or his or her designee, shall be non-voting members of  
28 the Committee.

29 The Committee shall biannually elect from its membership a  
30 Chair, who shall not be an employee of the Illinois  
31 Environmental Protection Agency or the Illinois Department of  
32 Natural Resources.

33 Members of the Advisory Committee may organize themselves  
34 as they deem necessary and shall serve without compensation.

35 The Department shall provide reasonable and necessary

1 staff support to the Committee.

2 (b) Within 120 days after the effective date of this Act,  
3 the Committee shall recommend rules to the Department. From  
4 time to time the Committee shall review, evaluate, and make  
5 recommendations (i) regarding State laws, rules, and  
6 procedures that relate to this Act and (ii) relating to the  
7 State's efforts to implement this Act.

8 (c) Within 6 months after the effective date of this Act,  
9 the Department, after consideration of the recommendations of  
10 the Committee (or if the Committee for any reason has not made  
11 recommendations, the Department itself), shall adopt any rules  
12 required by this Act prescribing procedures and standards for  
13 its administration. Nothing in this Act shall preclude, at any  
14 time, the recommendation, proposal, or adoption of any other  
15 rules deemed necessary for the orderly implementation of this  
16 Act.

17 (d) The Committee shall develop a plan for statewide  
18 wetlands protection and shall submit such plan to the  
19 Department. The Department may seek to obtain a delegation of  
20 COE authority under Section 404 of the federal Clean Water Act  
21 for all wetlands in Illinois on or before July 1, 2008 in  
22 accordance with Section 25 of this Act.

23 (e) The Committee shall assist counties having stormwater  
24 management authority under Section 5-1062 or 5-1062.1 of the  
25 Counties Code in coordinating and unifying stormwater  
26 management regulations adopted thereto, as required in Section  
27 65(f) of this Act.

28 Section 50. Appeal of final Department decision; judicial  
29 review.

30 (a) Any permit applicant who has been denied a permit in  
31 whole or in part, and any person who participated in the permit  
32 proceeding and who is aggrieved by a decision of the Department  
33 to grant a permit in whole or in part, may appeal the decision  
34 to the Director within 35 days of the permit grant or denial.  
35 However, the 35-day period for appealing to the Director may be

1 extended by the applicant for a period of time not to exceed 90  
2 days by written notice provided to the Director. In all such  
3 appeals, the burden of persuasion shall be on the party  
4 appealing the Department's decision.

5 (b) A person aggrieved by a final decision made pursuant to  
6 this Act may seek judicial review of the decision pursuant to  
7 the Administrative Review Law.

8 Section 55. Investigation; enforcement.

9 (a) In accordance with constitutional limitations, the  
10 Department shall have authority to enter at all reasonable  
11 times upon any private or public property for the purpose of  
12 inspecting and investigating to ascertain possible violations  
13 of this Act or of rules adopted hereunder, or of permits or  
14 terms or conditions thereof.

15 (b) The civil penalties provided for in this Section may be  
16 recovered in a civil action which may be instituted in a court  
17 of competent jurisdiction. The State's Attorney of the county  
18 in which the alleged violation occurred, or the Attorney  
19 General, may, at the request of the Department or on his or her  
20 own motion, institute a civil action in a court of competent  
21 jurisdiction to recover civil penalties and to obtain an  
22 injunction to restrain violations of the Act.

23 (c) Any person who violates any provision of this Act or  
24 any rule adopted hereunder, or any permit or term or condition  
25 thereof, shall be liable for a civil penalty of not to exceed  
26 \$10,000 per day of violation; such penalties may be made  
27 payable to the Wetlands Protection Fund and shall be deposited  
28 into that Fund as provided in subsection (j). In determining  
29 the appropriate civil penalty to be imposed under this Section,  
30 the Court is authorized to consider any matters of record in  
31 mitigation or aggravation of penalty, including but not limited  
32 to the following factors:

33 (1) The duration and gravity of the violation.

34 (2) The presence or absence of due diligence on the  
35 part of the violator in attempting to comply with

1 requirements of this Act and rules adopted hereunder or to  
2 secure relief therefrom as provided by this Act.

3 (3) Any economic benefits accrued by the violator  
4 through the violation.

5 (4) The amount of monetary penalty which will serve to  
6 deter further violations by the violator and to otherwise  
7 aid in enhancing voluntary compliance with this Act by the  
8 violator and other persons similarly subject to this Act.

9 (5) The number, proximity in time, and gravity of  
10 previously adjudicated violations of this Act by the  
11 violator.

12 (d) Any violation of any provision of this Act or any rule  
13 adopted hereunder, or any permit or term or condition thereof,  
14 shall not be deemed a criminal offense.

15 (e) All final orders imposing civil penalties pursuant to  
16 this Section shall prescribe the time for payment of such  
17 penalties. If any such penalty is not paid within the time  
18 prescribed, interest on such penalty at the rate set forth in  
19 subsection (a) of Section 1003 of the Illinois Income Tax Act  
20 shall be paid for the period from the date payment is due until  
21 the date payment is received. However, if the time for payment  
22 is stayed during the pendency of an appeal, interest shall not  
23 accrue during such stay.

24 (f) The Department may terminate a permit if the holder  
25 substantially violates any condition of the permit, obtains a  
26 permit by misrepresentation, or fails to disclose relevant  
27 facts.

28 (g) The Attorney General, or the State's Attorney of the  
29 county where the affected wetland is located, may, upon his or  
30 her own motion or upon request of the Department, institute a  
31 civil action in circuit court for an injunction or other  
32 appropriate legal action to restrain a violation of this Act or  
33 of any rule adopted under this Act. In the proceeding the court  
34 shall determine whether a violation has been committed or is  
35 likely to occur, and shall enter any order it considers  
36 necessary to remove the effects of the violation and to prevent

1 the violation from occurring, continuing, or being renewed in  
2 the future. An order may include a requirement that the  
3 violator restore the affected wetland area, including a  
4 provision that, if the violator does not comply by restoring  
5 the wetland within a reasonable time, the Department may  
6 restore the wetland to its condition prior to the violation and  
7 the violator shall be liable to the Department for the cost of  
8 restoration.

9 (h) Any penalty assessed pursuant to this Act, including  
10 costs of wetland restoration and any restoration requirement,  
11 shall be recorded by the clerk of the court as a lien against  
12 the land and shall not be removed until the penalty is paid or  
13 the restoration is completed.

14 (i) All costs, fees, and expenses in connection with an  
15 enforcement or restoration action shall be assessed as damages  
16 against the violator.

17 (j) All penalties collected under this Section shall be  
18 deposited into the Wetlands Protection Fund.

19 (k) Enforcement actions under this Section may be  
20 concurrent or separate.

21 Section 60. Fees.

22 (a) Within 90 days after the effective date of this Act the  
23 Department shall propose to the Illinois Pollution Control  
24 Board, and within 6 months of receiving that proposal the Board  
25 shall adopt by rule:

26 (1) a minimal processing fee for notification  
27 regarding Class III Wetlands and for processing a notice of  
28 intent to proceed under a general permit; and

29 (2) a schedule of permit fees for single regulated  
30 activities in Class IA, Class IB, and Class II wetlands.

31 (b) These fees shall be set at levels that allow the  
32 wetlands program to operate financially on a self-sustaining  
33 basis. The Department shall annually review the fees to  
34 determine whether the wetlands program is operating  
35 financially on a self-sustaining basis, and it may propose any

1 necessary changes in the fees to the Illinois Pollution Control  
2 Board.

3 Section 65. County authority.

4 (a) Nothing in this Act preempts or denies the right of any  
5 governmental body with a stormwater management program under  
6 Section 5-1062 of the Counties Code to control or regulate  
7 activities in any wetlands within the jurisdiction of the  
8 governmental body.

9 (b) Upon the request of a governmental body with a  
10 stormwater management program under Section 5-1062 of the  
11 Counties Code, the Director shall, within 30 calendar days of  
12 receiving the request, provide a letter recognizing whether the  
13 governmental body's stormwater management program:

14 (1) provides wetlands protection consistent with the  
15 intent of this Act; and

16 (2) has an administration and qualified staff to  
17 implement the governmental body's stormwater management  
18 program.

19 (b-5) After consultation with the Department of Natural  
20 Resources, the General Assembly finds and declares that the  
21 stormwater management programs implemented by DuPage, Lake,  
22 and Kane Counties under Section 5-1062 of the Counties Code, as  
23 they exist at the time of the passage of this Act, meet the  
24 requirements of subsection (b), and therefore they shall be  
25 deemed to have received recognition and approval under that  
26 subsection without further action by the Department.

27 (c) Activities within or affecting wetlands that occur  
28 within the jurisdiction of a governmental body with a  
29 stormwater management program under Section 5-1062 of the  
30 Counties Code that meets the provisions of subdivisions (b)(1)  
31 and (b)(2) of this Section are exempt from the requirements of  
32 this Act, but must meet those county stormwater management  
33 requirements, at a minimum. This exemption also applies during  
34 the period that the Department is considering a county's  
35 request under subsection (b), but the requirements of this Act

1 do apply until the county has requested recognition under  
2 subsection (b), unless the county has received immediate  
3 recognition under subsection (b-5) of this Section.

4 (d) The Director may rescind recognition status in the  
5 event that the governmental body with a stormwater management  
6 program under Section 5-1062 of the Counties Code no longer  
7 meets the provisions of subdivisions (b)(1) and (b)(2) of this  
8 Section.

9 (e) A governmental body with a stormwater management  
10 program under Section 5-1062 of the Counties Code that has  
11 obtained recognition by the Director under subsection (b) of  
12 this Section shall submit an annual report to the Director.

13 (f) Counties having authority under Section 5-1062 of the  
14 Counties Code to adopt a stormwater management program shall  
15 seek with the assistance of the Northeastern Illinois Planning  
16 Commission to coordinate and unify regulations adopted  
17 pursuant thereto.

18 (g) Nothing in this Act shall be construed as a limitation  
19 or preemption of any home rule power.

20 Section 70. Wetlands Protection Fund. All fees and  
21 penalties collected by the Department pursuant to this Act  
22 shall be deposited into the Wetlands Protection Fund, which is  
23 hereby created as a special fund in the State Treasury. In  
24 addition to any moneys that may be appropriated from the  
25 General Revenue Fund, the Illinois General Assembly shall  
26 appropriate moneys in the Wetlands Protection Fund to the  
27 Department in amounts deemed necessary to implement this Act.

28 Section 95. The State Finance Act is amended by adding  
29 Section 5.640 as follows:

30 (30 ILCS 105/5.640 new)

31 Sec. 5.640. The Wetlands Protection Fund.

32 Section 97. Severability. The provisions of this Act are

1 severable under Section 1.31 of the Statute on Statutes.